



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LITTLETON TEACHERS' ASSOCIATION,
NEA-NEW HAMPSHIRE

Complainant

and

LITTLETON SCHOOL BOARD

Respondent

CASE NO. T-0241:1

DECISION NO. 82-21

APPEARANCES

Representing the Complainant

John Fessenden, NEA-NH
Robert J. Tiews, Jr., Chrm. Exec. Board

Representing the Respondent

Roger Burlingame, Esquire
David Machell, Administrator
James B. Curran, Superintendent
David E. Harris, Chairperson

BACKGROUND

This matter came on for a hearing December 10, 1981 before this Board on an unfair labor practice charge filed by the Littleton Education Association ("Association") against the Littleton School Board and certain of its officers ("School Board"), alleging breach of the collective bargaining agreement as to a personal leave request by one of the Association's members. At hearing, it became clear that the underlying dispute had been the subject of a grievance.

The grievance which had been filed progressed through the initial steps of the grievance procedure, culminating in a discussion with the superintendent. No decision was made by him within the time limited by the terms of the grievance procedure. In such a circumstance, the grievant must request a hearing before the School Board within thirty (30) days of the discussion with the superintendent. A timely request was not made in this case, and the School Board has notified the grievant that the claim is considered dropped.

This factual development led this Board to request the parties to brief the following important question, one of the first impression here:

Under what circumstances, if any, may PELRB consider an unfair labor practice alleging a breach of the underlying claimant, for whatever reason, has failed to completely exhaust the applicable contract grievance procedure?

After careful review of the parties' thorough briefs, and consideration, the Board is of the opinion that such circumstances may exist, but do not in this case.

FINDING OF FACTS

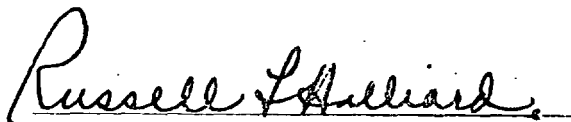
Our statute contemplates and requires that every collective bargaining agreement have a workable grievance procedure. The agreement between these parties does, one which is not overly complex or time-consuming, and which leads to an expeditious and certain resolution.

In this case, the procedure clearly foresaw the contingency of "no decision" from the superintendent, and directed the grievant to request further review within thirty (30) days. The grievant's failure to do so is sought to be excused on the basis that the superintendent led her to believe a decision would be forthcoming. It should be noted at this time that the School Board objected to the affidavit filed with the brief for the Association; this point is moot, since, even accepting the affidavit as true, we do not find circumstances justifying the failure to exhaust the grievance procedure.

At the very least, this Board will require that the grievant has been prevented from completing the grievance procedure, through circumstances not within her control. The precise contours of this limitation must await further development as cases present themselves, but suffice it to say that the grievant here ~~was~~ not so prevented.

DECISION AND ORDER

For the foregoing reasons, the complaint by the Association must be, and hereby is, DISMISSED.



Russell F. Hilliard, Esquire
Board Member

Signed this 27th day of April, 1982

By unanimous vote. Chairman Craig presiding. Present and voting members Osman, Mayhew and Hilliard. Also present, Executive Director Evelyn C. LeBrun.